

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MYLAN PHARMACEUTICALS INC., TEVA PHARMACEUTICALS
USA, INC., and AKORN INC.,
Petitioners,

v.

SAINT REGIS MOHAWK TRIBE,
Patent Owner.

Case IPR2016-01127 (US 8,685,930 B2)
Case IPR2016-01128 (US 8,629,111 B2)
Case IPR2016-01129 (US 8,642,556 B2)
Case IPR2016-01130 (US 8,633,162 B2)
Case IPR2016-01131 (US 8,648,048 B2)
Case IPR2016-01132 (US 9,248,191 B2)¹

**BRIEF OF AMICUS CURIAE NATIVE AMERICAN
INTELLECTUAL PROPERTY ENTERPRISE COUNCIL, INC.
REGARDING PATENT OWNER'S MOTION TO DISMISS**

¹ Cases IPR2017-00576 and IPR2017-00594, IPR2017-00578 and IPR2017-00596, IPR2017-00579 and IPR2017-00598, IPR2017-00583 and IPR2017-00599, IPR2017-00585 and IPR2017-00600, and IPR2017-00586 and IPR2017-00601 have respectively been joined with the captioned proceedings.

I. INTRODUCTION

Amicus curiae Native American Intellectual Property Enterprise Council, Inc. (“NAIPEC”) submits this brief to address several issues raised in Petitioners’ Opposition to the Patent Owner’s Motion to Dismiss (Paper No. 87, “Petitioners’ Brief”). Specifically, NAIPEC submits the information below to provide the Board with more context in relation to Native American intellectual property efforts and technology transfer agreements. Any suggestion that these transactions are a “sham” is hyperbole, and a characterization that NAIPEC strongly disputes in view of its extensive experience with both Native American intellectual property agreements and the communities that they benefit.

II. ARGUMENT

A. NAIPEC and the Importance of Native American Intellectual Property Agreements

NAIPEC is a 501(c)(3) American Indian led non-profit organization that provides assistance to Native American inventors, Tribes, and Tribally-owned businesses in matters concerning intellectual property. NAIPEC was founded in 2009 by David Petite, a successful Chippewa inventor. NAIPEC’s focus is to grow innovation and intellectual property within Native American communities and to protect and develop those interests economically for the benefit of these communities. A largely volunteer and pro-bono organization, NAIPEC’s activities range from providing expert advice and resources regarding business planning,

development, and management of intellectual property assets to working with legal services companies to provide legal assistance in matters related to intellectual property. It also works to improve the lives of Native Americans through numerous educational workshops, partnerships, and community assistance.

Native Americans have a proud history of entrepreneurship and inventorship. Cultivating intellectual property assets is an important strategic effort to foster the growth and success of Native American Tribes. Appropriation and outright theft of Native American inventions and ideas without attribution has occurred for hundreds of years. The curing of rubber, the game of Lacrosse, tortillas, potato chips, root beer, and innumerable planting, cultivation, crossbreeding, and cooking techniques and inventions were all Native American in origin, yet the Tribes saw little or no benefits aside from occasional lip service. Likewise, Native American Tribes wage a seemingly never-ending battle to prevent appropriation and resale of their artifacts by collectors and others attempting to profit from their heritage.²

Given the substantial gaps in Native American education, business, and economic development, largely attributed to lack of funding in these key areas, Native American innovators and business developers need the ability and the

² These problems have been so pervasive that Congress has passed legislation to help the Native American Tribes, including the Native American Graves Protection and Repatriation Act, 25 U.S.C. §§3001 et seq.

knowledge to protect their intellectual property and seek out beneficial agreements with others who wish to do the same. In 2012, NAIPEC conducted an informal study at the United States Patent and Trademark Office and found that Native Americans fall far short of other minorities, and the population as a whole, in availing themselves of the protections offered by this body.³ Another study conducted by NAIPEC in 2011 and 2012, under a grant from the Native American Business Development Institute, likewise found that the vast majority of Economic Development professionals of various Tribes in the Great Plains region were unaware of either the importance of intellectual property or how to use the systems already established to protect intellectual property.⁴

In relation to its efforts to facilitate the growth of intellectual property efforts for Native American Tribes, NAIPEC has worked with many Tribes, including the Navajo, Prairie Band Potowatami, Kickapoo, Winnebago, and Tohono O'odham, as well as organizations such as the U.S. Patent and Trademark Office, U.S. Dept. of the Interior, U.S. Dept. of Agriculture, NASA, and The Scotts Company LLC. For nearly a decade, NAIPEC has assisted Tribes and businesses with technology ranging from agricultural inventions to scalable fuel manufacturing and technologies for the aerospace industry.

³ <http://nativeamericaninventors.org/wp-content/uploads/2014/06/HARMONY-White-Paper-04-13.pdf>.

⁴ *Id.*

One core area of NAIPEC's activities has been to assist Tribes and other Native American individuals and organizations with technology transfer agreements with which to generate much-needed economic growth. NAIPEC believes that such agreements are valuable part of an asset portfolio and can be an important driver of education and business development for Tribes. NAIPEC has assisted numerous Tribes and other organizations with such agreements, some of which include:

- 2010: Providing technology transfer consulting advice for the Prairie Band Potowatami in Kansas, the Kickapoo Tribe in Kansas and The Winnebago Tribe in Nebraska in relation to a patented agricultural invention, AgriBoard;
- 2012: Providing technology transfer advice and counsel to the Navajo Tribe on their relationship with NASA; and
- 2013: Consulting and brokering a tech transfer arrangement between The Tohono O'odham Tribe in Arizona and a multi-national aerospace company.

B. Patent-related Agreements Provide Significant Benefit to American Indian Tribes

Technology transfer agreements — like those found in this case — are an important revenue component of many Tribes' economic plans. NAIPEC has spent nearly a decade assisting Tribes and Tribally-owned businesses with these types of agreements. Contrary to suggestion that Native American intellectual

property agreements are a “sham,” these agreements provide significant, tangible benefits to the Tribes.

As an organization very familiar with similar agreements and their positive affect on Native American Communities, the benefits to Native Americans are certainly legitimate and far from “insubstantial and illusory” from the perspective of Tribes. They provide vital support for one of the groups in most need of economic and educational assistance in the United States.

Further, any suggestion that these agreements only came about in response to IPR proceedings or the AIA is likewise baseless. NAIPEC has been active since 2009, working to provide benefits to Tribes and their partners well prior to the late-2012 enactment of the AIA, which initiated IPRs. NAIPEC itself has provided assistance on numerous technology transfer matters that predate the AIA and IPRs, as can be seen from the examples in §II.A. Through agreements like these — with or without the existence of IPRs — Tribes are able to provide legitimate benefits to real companies while addressing serious funding shortfalls for Native American Communities.

III. CONCLUSION

Native Americans Tribes are not only entitled, but encouraged, to enter into agreements and do business with the benefits of a sovereign nation in order to overcome significant historical disadvantages. Technology transfer agreements are

a legitimate part of many Tribes' necessary economic plans to better their communities. These agreements are not "shams," and, in fact, represent critical potential for economic advancement from the point of view of the Tribes that enter into them — an important factor that the Board should consider prior to any decision.

DATED this 1st day of December, 2017.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 37 CFR §§ 42.6(e)(4) and 42.205(b), the undersigned certifies that on December 1, 2017, a complete entire copy of the Brief of *Amicus Curiae* Native American Intellectual Property Enterprise Council, Inc. Regarding Patent Owner's Motion to Dismiss was provided, via electronic service, to the persons named below at their address of record:

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